

**249/2002 - African Institute for Human Rights and Development (on behalf of
Sierra Leonean refugees in Guinea)/Republic of Guinea**

Rapporteur:

31st Session: Commissioner Badawi
32nd Session: Commissioner Badawi
33rd Session: Commissioner Badawi
34th Session: Commissioner El-Hassan
35th Session: Commissioner El-Hassan
36th Session: Commissioner El-Hassan

Summary of facts

1. It is alleged by the Complainant that on 9th September 2000, Guinean President Lansana Conté proclaimed over the national Radio that Sierra Leonean refugees in Guinea should be arrested, searched and confined to refugee camps. His speech incited soldiers and civilians alike to engage in mass discrimination against Sierra Leonean refugees in violation of Article 2 of the African Charter.
2. The Complainant alleged that the discrimination occasioned by President Conté speech manifested itself primarily in at least five ways:
3. First, widespread looting and extortion occurred in the wake of President Conté's speech. Guinean soldiers evicted Sierra Leoneans from their homes and refugee camps. The soldiers further looted the homes, confiscated food, personal property and money from refugees at checkpoints. They also extorted large sums of money from detained refugees. These items were never returned to the refugees.
4. Second, the speech motivated soldiers and civilians to rise up against Sierra Leonean refugees inside and outside of the refugee camps. The resulting physical violence ranged from beatings, rapes, to shootings. Countless refugees died in these attacks, and many have scars as permanent reminders of their time in Guinea.
5. Third, after President Conté's speech, Guinean soldiers targeted Sierra Leonean refugees for arrest and detention without any just cause. Soldiers at checkpoints would inspect refugees for supposed rebel scars, calloused hands from carrying a gun, speaking Krio (the local language in Sierra Leone), or carrying a refugee card. However, the refugees had scars from tribal markings rather than the rebels and calloused hands from farming not carrying a gun. These false identifications were used to then detain refugees for hours and days for no other reason than being "a rebel" based upon being Sierra Leonean.

6. Fourth, the speech instigated widespread rape of Sierra Leonean women in Guinea. Furthermore, Guinean soldiers subjected men and women to humiliating strip searches. These searches were conducted sometimes several times a day and in front of large groups of people and on-looking soldiers.

7. Finally, Sierra Leonean refugees were forced to decide whether they were to be harassed, tortured and die in Guinea, or return to Sierra Leone in the midst of civil war where they would face an equally harsh fate. Thousands chose to flee back to their native Sierra Leone in response to the Guinean mistreatment. Furthermore, Guinean soldiers collected refugees, bussed them to Conakry seaport, and physically put them on the ferry forcing their return to Sierra Leone. The Guinean government was therefore not providing refuge and protection required by law, reported the Complainant.

Complaint:

8. The Complainant alleges that Articles **2, 4, 5, 12(5)** and **14** of the African Charter on Human and Peoples' Rights have been violated.

Procedure:

9. The communication dated 17th April 2002, was submitted by the Institute for Human Rights and Development in Africa on behalf of the Sierra Leonean refugees.

10. On 18th April 2002, a letter was sent to acknowledge receipt and inform the Complainant that the communication would be scheduled for consideration at its 31st session.

11. At the 31st Ordinary Session held from 2 – 16 May 2002 in Pretoria, South Africa, the Commission decided to be seized of the case and requested the parties to submit their observations on the admissibility of the case.

12. On 29th May 2002, the Secretariat of the African Commission informed the parties of the decision of the African Commission.

13. On 24th June 2002, the Complainant forwarded to the Secretariat of the African Commission its written submission on the admissibility of the case, a copy was sent to the Respondent State by post on 16 August 2002.

14. By letters dated 28 November 2002, 17 January 2003 and 20 March 2003, the Secretariat wrote to the government requesting it to react to this complaint. Up to the holding of the 33rd Ordinary session in Niamey, Niger, from 15 – 29 May 2003, the Secretariat had not received any feedback from the Respondent State.

15. At the 33rd Ordinary Session the African Commission declared this communication admissible, and the parties were requested to forward their written submission on the merits.

16. On 18th June 2003, the Secretariat informed the parties of the above decision and requested them to transmit their brief on the merits to the Secretariat within a period of 3 months, the Note Verbale to the Respondent State was hand delivered.

17. On 29th August 2003, the Complainant forwarded its written submission on the merits of the case. On 22 September 2003, the Secretariat of the African Commission forwarded the written submission from the Complainant to the Respondent State

18. On 9th October 2003, the Secretariat of the African Commission received a Note Verbale from the Respondent State stating that they had not received the written submission from the Complainant.

19. By note Verbale dated 14th October 2003, the Secretariat of the African Commission forwarded once again the written submission from the Complainant to the Respondent State by DHL.

20. During its 34th Ordinary Session held in Banjul, The Gambia from the 6th to 20th November 2003, the African Commission heard the oral presentations on admissibility of the parties concerned and decided to postpone consideration on the merits of the case to its 35th Ordinary Session. By note verbale dated 4 December 2003, and by letter bearing the same date both parties were accordingly informed of the commission's decision.

21. The Commission instructed the Secretariat to have the comments of the Complainant translated into French and have the translation sent to the Respondent State to enable it submit its written comments on the merits of the communication.

22. These submissions on the merits of the case submitted by the Complainant were translated into French and sent to the Respondent State by Note Verbale on the 11th December 2003. The Respondent State was also informed that the communication would be considered on the merits at the Commission's 35th ordinary session.

23. By Note verbale dated 26 December 2003, the Secretariat received an acknowledgement from the Respondent State to its note verbale of 11 December 2003 noting that the Respondent State will forward its submission on admissibility within three months.

24. By note verbale dated 9 March 2004 the Secretariat reminded the Respondent State to forward its submission on admissibility noting further that the communication will be considered at the 35th ordinary session to be held in Dakar, Senegal from 3 – 17 May, 2004.

25. The Respondent State sent its reaction as to the merits of the communication to the Secretariat of the Commission on the 5th April 2004.

26. At the 35th Ordinary session, the Respondent State was not represented due to the change of the venue. At the 35th Ordinary Session, the Commission heard oral submissions from complainants and testimonies from witnesses on the merits of the communication.

27. By note verbale dated 18 June 2004 the Secretariat of the African Commission informed the State of its decision taken at the 35th ordinary session and by letter of the same date informed the complainant accordingly.

28. At its 36th Ordinary Session held from 23 November to 7 December 2004 in Dakar, Senegal, the African Commission considered this communication and decided to deliver its decision on the merits.

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Admissibility

29. The admissibility of communications brought pursuant to Article 55 of the African Charter is governed by the condition stipulated in Article 56 of the Charter. This Article lays down seven (7) conditions for admissibility.

30. The African Commission requires that all these conditions be fulfilled for a communication to be declared admissible. Regarding the present communication, the two parties do not dispute that Article 56 (1, 2, 3, 4, 6 and 7) have been fulfilled, and the only article that is in dispute is Article 56(5) of the African Charter.

31. Article 56(5) requires the exhaustion of local remedies as a condition of the presentation of a complaint before the Commission is premised on the principle that the Respondent State must first have an opportunity to redress by its own means within the framework of its own domestic legal system, the wrong alleged to have been done to the individual.

32. Concerning the matter of exhausting local remedies, a principle endorsed by the African Charter as well as customary international law, the Complainant argues that any attempt by Sierra Leonean refugees to seek local remedies would be futile for (3) three reasons:

33. First, the persistent threat of further persecution from state officials has fostered an ongoing situation in which refugees are in constant danger of reprisals and punishment. When the authorities tasked with providing protection are the same individuals persecuting victims an atmosphere in which domestic remedies are available is compromised. Furthermore, according to the precedent set by the African Commission in *Communication 147/95 and 149/96 Sir Dawda K. Jawara / the Gambia*,

the need to exhaust domestic remedies is not necessarily required if the Complainant is in a life-threatening situation that makes domestic remedies unavailable.

34. Second, the impractical number of potential plaintiffs makes it difficult for domestic courts to provide an effective avenue of recourse. In September of 2000, Guinea hosted nearly 300,000 refugees from Sierra Leone. Given the mass scale of crimes committed against Sierra Leonean refugees – 5,000 detentions, mob violence by Guinean security forces, widespread looting – the domestic courts would be severely overburdened if even a slight majority of victims chose to pursue legal redress in Guinea. Consequently, the requirement to exhaust domestic remedies is impractical.

35. Finally, exhausting local remedies would require Sierra Leonean victims to return to Guinea, the country in which they suffered persecution, a situation that is both impractical and unadvisable. According to precedent set by the Commission in *Communication 71/92 Rencontre Africaine pour la Défense des Droits de l'Homme / Zambie*, victims of persecution are not necessarily required to return to the place where they suffered persecution to exhaust local remedies.

36. In this present case, Sierra Leonean refugees forced to flee Guinea after suffering harassment, eviction, looting, extortion, arbitrary arrests, unjustified detentions, beatings and rapes. Would it be required to return to the same country in which they suffered persecution? Consequently, the requirement to exhaust local remedies is inapplicable.

For these reasons, the communication is declared admissible.

Merits

37. In interpreting and applying the African Charter, the African Commission relies on its jurisprudence and, as provided by Articles 60 and 61 of the African Charter, on appropriate and relevant international and regional human rights instruments, principles and standards.

38. The African Commission is therefore amenable to legal arguments that are supported by appropriate and relevant international and regional human rights principles, norms and standards.

39. The Petitioners have enclosed several affidavits from Sierra Leonean refugees who suffered widespread human rights abuses including harassment, evictions, looting, extortion, arbitrary arrests, beatings, rapes and killings while seeking refuge in the Republic of Guinea.

40. These accounts are based on interviews obtained from collaboration between the Institute for Human Rights and Development in African and Campaign for Good Governance, a Sierra Leonean NGO. Lawyers from both organisations interviewed and recorded statements from refugees who had returned to Sierra Leone from Guinea. For

the most part, the depiction of events is substantiated by reports from Human Rights Watch and Amnesty International who have documented the situation of Sierra Leonean refugees in Guinea during the period in question.

41. The Republic of Guinea has ratified several regional and international human rights instruments which include the African Charter, the OAU Convention on the Specific Aspects of Refugee Problems in Africa, the International Covenant on Civil and Political Rights, the UN Convention Against Torture, and the 1951 UN Convention on the Status of Refugees, together with its 1967 Optional Protocol.

42. While the efforts of the Guinean authorities to host refugees are commendable, the allegations that the government instigated and directly discriminated against Sierra Leonean refugees present a picture of serious human rights abuses which contravene the African Charter and the other international human rights instruments to which Guinea is a party.

43. The statements made under oath by several refugees indicate that their refugee camps were direct targets and taken together with accounts of numerous other abuses, constitute tangible evidence that the Sierra-Leonean refugees in this situation had been targeted on the basis of their nationality and had been forced to return to Sierra Leone where their lives and liberty were under threat from the on-going war.

44. In view of the circumstances, the Complainant alleges that the situation which prevailed in Guinea in September 2000 manifestly violates Article 12 (5) of the African Charter which sets forth that:

“The mass expulsion of strangers is prohibited. Mass expulsion is that which targets national, racial, ethnic or religious groups as a whole”.

45. Among the Articles and other legal instruments to which the Respondent State is a party and by which it is bound to protect all persons against discrimination can be noted: Article 4 of the OAU Convention on the Specific Aspects of Refugees, Article 26 of the International Covenant on Civil and Political Rights and Article 3 of the 1951 United Nations Convention on the Status of Refugees.

46. The Complainants allege that in his speech of the 9th September 2000, delivered on radio in *Susu* language, President Conte incited soldiers and civilians to engage in large scale discriminatory acts against Sierra-Leonean refugees, the consequences of which had been that these persons were the direct victims of harassment, deportations, looting, stealing, beatings, rapes, arbitrary arrests and assassinations. It is further alleged that the President made no effort to distinguish between refugees and rebels and that the Government is therefore directly responsible for the violation of this fundamental precept of international law: Non-discrimination.

47. The Complainants also allege that the Respondent State violated the principle of non-refoulement under which no person should be returned by force to his home country where his liberty and life would be under threat.

48. The Complainants contend that President Conte's speech not only made thousands of Sierra-Leonean refugees flee Guinea and return to the dangers posed by the civil war, but it also clearly authorized the return by force of Sierra-Leonean refugees. Thus, the voluntary return of refugees to Sierra Leone under these circumstances cannot be considered as voluntary but rather as a dangerous option available for the refugees.

49. The Respondent State alleges that on the 1st September 2000, the Republic of Guinea was victim of armed aggression perpetrated by elements from Liberia and Sierra Leone. These surprise attacks which were carried out simultaneously at its South and South-Eastern borders resulted in the fleeing en masse, of the populations from these zones.

50. Matching reports which came from all fronts to the Respondent State denounced persons who had lived for a long time in Guinea as refugees, and who had turned out to be, where they did not figure among those who had attacked Guinea, at least as accomplices of the attackers.

51. The President of the Republic, by virtue of the powers granted him under the Constitution, jumped to it by taking the measures necessary for safeguarding the nation's territorial integrity. In the process he recommended that all refugees be quartered and that Guineans scatter in all districts in order to unmask the attackers who had infiltrated the populations.

52. The Respondent State emphasises that such measures are in conformity with the provisions of Article 9 of the 1951 UN Convention on the Status of Refugees on refugees and Article 41 of the Laws of Guinea which provides that: "the President of the Republic is the guarantor/custodian of the independence of the nation and of territorial integrity. He is responsible for national defence....."

53. The Respondent State intimates that for the majority of the refugees the statement by the Head of State had been beneficial since the refugees had been registered, given supplies and placed in secured areas.

54. The State underscored the fact that at the time of the events there were not only Sierra Leonean refugees in Guinea but also Liberians and Guinea Bissau nationals. Guinea therefore had no interest in targeting Sierra Leonean refugees since it was public knowledge that all the attacks against the country had been directed from Liberia.

55. The Respondent State points out that there is no violation of the right to non-discrimination, since the speech referred to never mentioned specifically Sierra Leonean refugees. The Respondent State recalled that during the 34th Ordinary Session the Complainant had been requested to produce a transcript of the entire statement, which

had not been done, whereas it is the responsibility of the Complainant to provide evidence.

56. The Complainants allege that almost immediately after the broadcast of President Conte's speech, the Guinean Authorities and civilians started to harass the Sierra Leonean refugees and to carry out large scale looting, expulsions and robbery of assets.

57. The Complainants contend that the rapes and physical searches carried out by the Guinean Authorities to establish a kind of discrimination against Sierra Leonean refugees constitute some form of inhuman treatment, thereby violating the dignity of the refugees.

58. The Complainants allege that the President's speech had given rise to widespread sexual violence largely against the Sierra Leonean women in Guinea with the Guinean soldiers using rape as a weapon to discriminate against the refugees and to punish them for being so-called rebels. The communication contains detailed reports of the raping of women of various ages in the prisons, in houses, control posts and refugee camps.

59. The Complainants contend that the violence described in the statements made under oath was undeniably coercive, especially since the soldiers and the civilians used arms to intimidate and threaten the women before and during the forced sexual relations.

60. The Complainant reports large scale acts of violence carried out by the soldiers, police and Guinean civilian protection groups against the thousands of Sierra Leonean refugees in the camps and in the Capital, Conakry. Different cases are mentioned, namely S.B. who is said to have been seriously injured, his hip dislocated and his knees broken with a gun in the Gueckedou Camp. S.Y. talks about soldiers who had shot her in the leg; she reports having been witness to a scene where soldiers were cutting off the ears of Sierra Leoneans with bayonets. L.C. recounts that Guinean soldiers had been shooting at random at the Sierra Leone Embassy on a group of Sierra Leoneans who had been waiting to be repatriated and that a large number of these refugees had been killed; he mentioned having also been witness at a scene where soldiers in trucks were shooting at Sierra Leoneans who were boarding the ferry to be repatriated: several of them fell into the water and were drowned.

61. The Respondent State, in a critical appraisal of these testimonies as reported, not only made comments but also raised some questions. With regard to isolated cases like those of S.B., M.F., and S.Y., the issues alluded to remain to be proved, declared the Respondent State, since they constitute a simple gathering of evidence. Concerning S.Y.'s testimony, who contends that she saw Guinean soldiers cutting off the ears of Sierra Leoneans with bayonets, it has to be pointed out that if such practices have been noted in certain countries, they do not figure among the habits of the Guinean Army.

62. The Complainants allege that the Guinean soldiers also subjected the Sierra Leonean men and women to humiliating physical searches. These searches were frequently carried out, sometimes in the presence of a group of soldiers and curious onlookers, which constituted a serious insult to their dignity.

63. The Respondent State disputes the testimony of L.C. who recounts that in front of the Sierra Leone Embassy building Guinean soldiers were shooting at random at a group of Sierra Leoneans who were waiting to be repatriated.

64. The Respondent State recalls that the Republic of Guinea and the Republic of Sierra Leone have always enjoyed relations of fraternity and good neighbourliness. This is evidenced by the fact that the Government of Sierra Leone has never complained to the Government of Guinea about any such situation. To say that Sierra Leonean refugees have been shot at by Guinean soldiers is more fiction than reality.

65. Considering all the accusations thus described by the Complainant, the Respondent State wonders if it is only Sierra Leonean refugees who live on Guinean soil. The Respondent State alleges that some hundreds of thousands of Liberian refugees also live in Guinea and enjoy the same privileges and protection as do the Sierra Leoneans. It requested the Complainant to provide evidence with regard to the number of persons killed or injured and to indicate where or to which hospital they had been taken during the so called shooting incident by the Guinean soldiers of Sierra Leonean refugees.

66. The Respondent State recognises that if these testimonies as reported by the Complainant are proved they can only give rise to emotion and reprobation. But it insists that evidence must be produced and it is the responsibility of the Complainant to produce all the required evidence on the cases reported. The Respondent State points out that if these accounts have a basis the necessary investigations will be carried out and those responsible will be punished for their crimes.

67. The African Commission is aware that African countries generally and the Republic of Guinea in particular, face a lot of challenges when it comes to hosting refugees from neighbouring war torn countries. In such circumstances some of these countries often resort to extreme measures to protect their citizens. However, such measures should not be taken to the detriment of the enjoyment of human rights.

68. When countries ratify or sign international instruments, they do so willingly and in total cognisance of their obligation to apply the provisions of these instruments. Consequently, the Republic of Guinea has assumed the obligation of protecting human rights, notably the rights of all those refugees who seek protection in Guinea.

69. In *Communication 71/92 Rencontre africaine pour la Défense des Droits de l'Homme/Zambia*, the African Commission pointed out that “those who drafted the Charter considered large scale expulsion as a special threat to human rights”. In

consequence, the action of a State targeting specific national, racial, ethnic or religious groups is generally qualified as discriminatory in this sense as it has no legal basis.

70. The African Commission notes that Guinea is host to the second largest refugee population in Africa with just under half a million refugees from neighbouring Sierra Leone and Liberia. It is in recognition of this role that Guinea was selected to host the 30th Anniversary celebrations of the 1969 OAU Convention on the Specific Aspects of Refugee Problems in Africa, which was held in Conakry, Guinea in March 2000.

71. The African Commission appreciates the legitimate concern of the Guinean Government in view of the threats to its national security posed by the attacks from Sierra Leone and Liberia with a flow of rebels and arms across the borders.

72. As such, the Government of Guinea is entitled to prosecute persons that they believe pose a security threat to the State. However, the massive violations of the human rights of refugees as are outlined in this communication constitute a flagrant violation of the provisions of the African Charter.

73. Although the African Commission was not provided with a transcript of the speech of the President, submissions before the Commission led it to believe that the evidence and testimonies of eye witnesses reveal that these events took place immediately after the speech of the President of the Republic of Guinea on 9 September 2000.

74. The African Commission finds that the situation prevailing in Guinea during the period under consideration led to certain human rights violations.

For the above reasons, the African Commission,

Finds the Republic of Guinea in violation of Articles 2, 4, 5, 12 (5) and 14 of the African Charter and Article 4 of the OAU Convention Governing the Specific Aspects of Refugees in Africa of 1969.

Recommends that a Joint Commission of the Sierra Leonean and the Guinea Governments be established to assess the losses by various victims with a view to compensate the victims.

**Adopted at the 36th Ordinary Session of the African Commission
held from 23 November to 7 December 2004 in Dakar, Senegal**

